

for which it is intended on the Federal Test Procedure road durability driving cycle. A fresh converter results when the converter has operated between 2000 and 5000 miles or equivalent hours. An aged converter results when the converter has been operated for the warranted life of the original equipment converter.

(c) Where one generic converter is intended to cover multiple vehicle or engine configurations, converter aging may be obtained per Paragraph (b) above, on a vehicle or engine which represents the greatest peak air flow of the group of vehicle configurations to be covered, and whose calibration and feed gas concentrations are representative of the vehicle or engine configurations being certified for.

#### 2. Other Considerations.

(a) Replacement converter must fit within the width and length space envelope of the original equipment converter. Converter spacing from the underbody and for ground clearance must be the same or greater than the original equipment converter application.

(b) Pressure drop measured between inlet and outlet pipe interconnecting points on the replacement converter shall be within  $\pm 25\%$  of similar measurements for the original equipment converter being replaced, when measured at each of three flow conditions 50 SCFM, 100 SCFM, and 150 SCFM with a suitable fluid medium such as air. Maximum allowable exhaust gas leakage from the replacement converter shall be 0.4 cubic feet per minute measured at 4.0 pounds per square inch differential. All measurements must be normalized to equal density conditions.

(c) Converter skin temperature shall be measured during the converter efficiency test. The skin temperature for the replacement converter must equal or be less than that for the original equipment converter.

### P. AIR CLEANER FILTER ELEMENT

#### 1. Test Procedures and Criteria.

(a) Using test equipment and procedures specified in SAE-J726c, perform:

(i) Air Flow and Pressure Drop Test (2.3) at 200 SCFM, record test conditions and pressure drop.

(ii) Efficiency Test (2.4) to measure full life efficiency at 200 SCFM to a total pressure drop of 9 inches of water; record test conditions and test duration from first to last addition of standard dust, weigh test element and absolute filter at end of test using three randomly selected original equipment air filter elements.

(b) Perform tests as in (a) above, under conditions controlled to within  $\pm 10\%$  of the corresponding original equipment test conditions, for three randomly selected replacement air filter elements.

(c) The replacement air filter element average recorded test results. The pressure drop in (i) and absolute filter weight in (ii) must be equal to or less than those average results for the original equipment test results. The replacement air filter averaged test results for element weight in (ii) must be equal to or larger than averaged result for the original equipment averaged test results.

#### 2. Durability Procedure.

(a) After use in the intended vehicle or engine application for the recommended service interval, the replacement element shall evidence an increase in pressure drop (as measured in 1 (a)(i) above) equal to or less than that of the original equipment air filter element tested in the identical manner.

[45 FR 78464, Nov. 25, 1980, as amended at 54 FR 32593, Aug. 8, 1989]

### APPENDIX II TO SUBPART V OF PART 85— ARBITRATION RULES

#### Part A—Pre-Hearing

##### Section 1: Initiation of Arbitration

Either party may commence an arbitration under these rules by filing at any regional office of the American Arbitration Association (the AAA) three copies of a written submission to arbitrate under these rules, signed by either party. It shall contain a statement of the matter in dispute, the amount of money involved, the remedy sought, and the hearing locale requested, together with the appropriate administrative fee as provided in the Administrative Fee Schedule of the AAA in effect at the time the arbitration is filed. The filing party shall notify the MOD Director in writing within 14 days of when it files for arbitration and provide the MOD Director with the date of receipt of the bill by the part manufacturer.

Unless the AAA in its discretion determines otherwise and no party disagrees, the Expedited Procedures (as described in Part E of these Rules) shall be applied in any case where no disclosed claim or counterclaim exceeds \$32,500, exclusive of interest and arbitration costs. Parties may also agree to the Expedited Procedures in cases involving claims in excess of \$32,500.

All other cases, including those involving claims not in excess of \$32,500 where either party so desires, shall be administered in accordance with Parts A through D of these Rules.

##### Section 2: Qualification of Arbitrator

Any arbitrator appointed pursuant to these Rules shall be neutral, subject to disqualification for the reasons specified in Section 6. If the parties specifically so agree in writing, the arbitrator shall not be subject to disqualification for said reasons.

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The term “arbitrator” in these rules refers to the arbitration panel, whether composed of one or more arbitrators.

### Section 3: Direct Appointment by Mutual Agreement of Parties

The involved manufacturers should select a mutually-agreeable arbitrator through which they will resolve their dispute. This step should be completed within 90 days from the date of receipt of the warranty claim bill by the part manufacturer.

### Section 4: Appointment From Panel

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: 90 days from the date of receipt of the warranty claim bill by the part manufacturer, the AAA shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the National Panel of Commercial Arbitrators, established and maintained by the AAA.

Each party to the dispute shall have ten days from the mailing date in which to cross off any names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

### Section 5: Number of Arbitrators; Notice to Arbitrator of Appointment

The dispute shall be heard and determined by one arbitrator, unless the AAA in its discretion, directs that a greater number of arbitrators be appointed.

Notice of the appointment of the arbitrator shall be mailed to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

### Section 6: Disclosure and Challenge Procedure

Any person appointed as an arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or

present relationship with the parties or their representatives. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others. Upon objection of a party to the continued service of an arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

### Section 7: Vacancies

If for any reason an arbitrator should be unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

In the event of a vacancy in a panel of arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

### Section 8: Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is unobtainable, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

### Section 9: Administrative Conference and Preliminary Hearing

At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings.

In large or complex cases, at the request of any party or at the discretion of the arbitrator or the AAA, a preliminary hearing with the parties and/or their representatives and the arbitrator may be scheduled by the arbitrator to specify the issues to be resolved, stipulate to uncontested facts, and to consider any other matters that will expedite the arbitration proceedings. Consistent with the expedited nature of arbitration, the arbitrator may, at the preliminary hearing, establish (i) the extent of and the schedule for the production of relevant documents and other information, (ii) the identification of any witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute.

Section 10: Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within ten days after notice of the request has been mailed to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale and its decision shall be final and binding.

*Part B—The Hearing*

Section 1: Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The AAA shall mail to each party notice thereof at least ten days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

Section 2: Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

Section 3: Attendance at Hearings

The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Representatives of the MOD director, and any persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

Section 4: Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

Section 5: Majority Decision

All decisions of the arbitrators must be by a majority. The award must also be made by a majority.

Section 6: Order of Proceedings and Communication with Arbitrator

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time, and place of the hearing, and the presence of the arbitrator, the parties and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to Part A Section 9 of these Rules.

The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no direct communication between the parties and an arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the neutral arbitrator shall be directed to the AAA for transmittal to the arbitrator.

Section 7: Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.

Section 8: Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by affidavit, but

shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

#### **Section 9: Closing of Hearing**

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed and a minute thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Part B Section 9 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

#### **Section 10: Reopening of Hearing**

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. The arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

#### **Section 11: Waiver of Oral Hearing**

The parties may provide, by written agreement, for the waiver of oral hearings.

#### **Section 12: Waiver of Rules**

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection thereto in writing, shall be deemed to have waived the right to object.

#### **Section 13: Extensions of Time**

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

#### **Section 14: Serving of Notice**

Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or con-

tinuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, inside or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms of electronic communication to give the notices required by these rules.

#### **Part C—Award and Decision**

##### **Section 1: Time of Award**

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

##### **Section 2: Form of Award**

The award shall be in writing and shall be signed by the arbitrator, or if a panel is utilized, a majority of the arbitrators. It shall be accompanied by a written decision which sets forth the reasons for the award. Both the award and the decision shall be filed by the arbitrator with the MOD Director.

##### **Section 3: Scope of Award**

The arbitrator may grant to the vehicle manufacturer any repair expenses that he or she deems to be just and equitable.

##### **Section 4: Award upon Settlement**

If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of the agreed settlement in an award. Such an award is referred to as a consent award. The consent award shall be filed by the arbitrator with the MOD Director.

##### **Section 5: Delivery of Award to Parties**

Parties shall accept as legal delivery of the award, the placing of the award, or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

##### **Section 6: Release of Documents for Judicial Proceedings**

The AAA shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the AAA's

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possession that may be required in judicial proceedings relating to the arbitration.

### *Part D—Fees and Expenses*

#### Section 1: Administrative Fee

The AAA shall be compensated for the cost of providing administrative services according to the AAA Administrative Fee Schedule and the AAA Refund Schedule. The Schedules in effect at the time the demand for arbitration or submission agreement is received shall be applicable.

The administrative fee shall be advanced by the initiating party or parties, subject to final allocation at the end of the case.

When a claim or counterclaim is withdrawn or settled, the refund shall be made in accordance with the Refund Schedule. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fee.

#### Section 2: Expenses

The loser of the arbitration is liable for all arbitration expenses unless determined otherwise by the arbitrator.

#### Section 3: Arbitrator's Fee

An arrangement for the compensation of an arbitrator shall be made through discussions by the parties with the AAA and not directly between the parties and the arbitrator. The terms of compensation of arbitrators on a panel shall be identical.

#### Section 4: Deposits

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to defray the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

### *Part E—Expedited Procedures*

#### Section 1: Notice by Telephone

The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

#### Section 2: Appointment and Qualifications of Arbitrator

The AAA shall submit simultaneously to each party an identical list of five proposed arbitrators drawn from the National Panel of Commercial Arbitrators, from which one arbitrator shall be appointed.

Each party may strike two names from the list on a preemptory basis. The list is return-

able to the AAA within seven days from the date of the AAA's mailing of the list to the parties.

If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from among other members of the panel without the submission of additional lists.

The parties will be given notice by the AAA by telephone of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Part A, Section 6. The parties shall notify the AAA, by telephone, within seven days of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be confirmed in writing to the AAA with a copy to the other party or parties.

#### Section 3: Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place of the hearing. The AAA will notify the parties by telephone, at least seven days in advance of the hearing date. Formal Notice of Hearing will be sent by the AAA to the parties and the MOD Director.

#### Section 4: The Hearing

Generally, the hearing shall be completed within one day, unless the dispute is resolved by the submission of documents. The arbitrator, for good cause shown, may schedule an additional hearing to be held within seven days.

#### Section 5: Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 days from the date of the closing of the hearing.

#### Section 6: Applicability of Rules

Unless explicitly contradicted by the provisions of this part, provisions of other parts of the Rules apply to proceedings conducted under this part.

[54 FR 32593, Aug. 8, 1989, as amended at 70 FR 40432, July 13, 2005]

## **Subpart W—Emission Control System Performance Warranty Short Tests**

AUTHORITY: Secs. 207, 301(a), Clean Air Act as amended (42 U.S.C. 7541(b) and 7601(a)).

### **§ 85.2201 Applicability.**

(a) This subpart contains the short tests and standards to be employed in conjunction with the Emissions Performance Warranty, subpart V.

(b) *Calendar and model year limitations.* Certain test procedures contained